

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

2000 Biennial Regulatory Review of
Part 68 of the Commission's Rules and
Regulations

CC Docket No. 99-216

BELLSOUTH COMMENTS

BELLSOUTH CORPORATION

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BellSouth Corporation ("BellSouth") respectfully submits these comments in response to the *Notice of Proposed Rulemaking* ("NPRM") in the above-captioned proceeding.¹ The instant *NPRM* seeks comment on the privatization of two Part 68 functions currently performed by the Commission: (1) the development of technical criteria for customer premises equipment ("CPE") and (2) the registration of CPE. BellSouth sets forth its positions below.

SUMMARY

Although BellSouth generally supports the Commission's efforts to modify or eliminate those rules that are no longer necessary, BellSouth believes that the Commission must retain – and in some instances enhance – certain aspects of Part 68. Specifically, BellSouth urges the Commission to:

- retain the majority of the current Part 68 rules;

¹ 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations, CC Docket No. 99-216, *Notice of Proposed Rulemaking*, FCC 00-171 (rel. May 22, 2000) ("NPRM").

- continue to provide Part 68 oversight and enforcement functions;
- allow standards-setting bodies to establish technical standards and incorporate those standards into the Commission's rules within a defined time period;
- should the need arise, either expand Part 68 or adopt new rules to ensure that all equipment interconnecting to the network at any point does not result in harm to the PSTN; and
- privatize equipment registration functions either through the use of telecommunications certification bodies or the declaration of conformity process (or a combination of the two) with appropriate safeguards.

Reducing the government's role in the establishment of technical standards and equipment registration is a much more expedient and effective way to bring new and innovative products to the market. Nonetheless, Part 68 plays a critical role in assuring that the Public Switched Telephone Network ("PSTN") is protected from harm and that all members of the public receive quality telecommunications service. Thus, BellSouth cautions the Commission against moving too quickly to eliminate certain Part 68 rules. Moreover, regardless of the proposals adopted, if the new process is ineffective, the Commission must be prepared to resume quickly the full panoply of duties and responsibilities required to protect the network and ensure the delivery of quality telecommunications services to the public.

I. THE COMMISSION SHOULD RETAIN THE MAJORITY OF THE TECHNICAL STANDARDS CONTAINED IN PART 68.

The Commission proposes to retain only those technical criteria set forth in Part 68 "that ensure access to telecommunications and services by persons with disabilities

and those that deal with network demarcation and inside wire.”² BellSouth strongly objects to such a drastic approach and urges the Commission to retain the majority of the technical requirements contained in Part 68.³

The Part 68 technical standards are absolutely essential to protect the network from harm and should not be watered down. As the record overwhelmingly demonstrates, the private market will not adequately police itself in order to minimize network harm.⁴ Market failure occurs because, as the Commission explains, “the manufacturer or importer does not have full economic incentive to avoid offering harmful CPE”⁵ This lack of incentive makes the force of law behind Part 68 technical criteria vital to protecting the PSTN. BellSouth does not believe that the Commission can give true force and effect to technical standards that are not explicitly set forth in its rules.

The technical specifications contained in Part 68 are the culmination of decades of hard work among industry members, standards-setting bodies, manufacturers, and the Commission. Most of these technical standards must remain intact as an explicit part of the Commission’s rules. The Commission inquires “how, from a legal perspective, [it]

² *NPRM*, ¶ 3.

³ There may be a small number of Part 68 technical specifications that are no longer necessary and can be eliminated. For example, those Part 68 rules that govern analog private line interfaces are essentially obsolete. *See, e.g.*, 47 C.F.R. § 68.308(b)(6). If the Commission were to conclude that no equipment was being manufactured with these analog private line interfaces, it would be reasonable to grandfather the existing equipment and eliminate the relevant Part 68 rules.

⁴ *See NPRM*, ¶ 21.

⁵ *NPRM*, ¶ 21.

can give privately developed technical criteria the force of law.”⁶ BellSouth submits that the best way to accomplish this goal is to retain most of the existing Part 68 rules and incorporate industry-developed standards into its rules through the rulemaking process. It is not enough for the Commission to simply assert that the force of law is given to standards that are not explicitly referenced in its rules.

Rather than eliminate the bulk of the Part 68 technical requirements, the Commission should allow the industry standards-setting bodies to identify those technical criteria that are no longer necessary. They are in the best position to make such a determination. Nonetheless, if the Commission proceeds with reducing the technical criteria contained in Part 68, at a minimum, it should retain the recently adopted inside wiring quality standards⁷ and the Type B Telephone Line Surge requirements.⁸ These technical standards are a direct outgrowth of the market’s failure to protect the network and must remain a part of the Commission’s rules. As BellSouth demonstrated in the proceeding adopting minimum standards for inside wiring, over 90,000 of its customers experienced cross-talk due to inferior inside wiring.⁹ Unsuspecting consumers have borne the brunt of this market failure, which has resulted in misplaced customer dissatisfaction with BellSouth as well as annual multi-million dollar operational expenses

⁶ NPRM, ¶ 24.

⁷ *Review of Sections 68.104 and 68.213 of the Commission’s Rules Concerning Connection of Simple Inside Wiring to the Telephone Network*, CC Docket No. 88-57; *Petition for Modification of Section 68.213 of the Commission’s Rules filed by the Electronic Industries Association*, RM 5643, *Third Report and Order*, 15 FCC Rcd 927 (2000) (“*Inside Wiring Standards Order*”).

⁸ *See Amendment of Part 68 of the Commission’s Rules*, CC Docket No. 96-28, *Report and Order*, 12 FCC Rcd 19218 (1997); 47 C.F.R. § 68.302(c).

⁹ *Inside Wiring Standards Order*, n.29 (citing Letter from Ben G. Almond, BellSouth to William F. Caton, FCC (dated October 21, 1997)).

to resolve these troubles. Again, if the Commission rejects BellSouth's proposal to retain most of the technical criteria contained in Part 68, at a minimum, it must retain the new inside wiring quality standards and the Type B Telephone Line Surge protection requirements.

As demonstrated above, BellSouth supports retaining most of the current Part 68 technical requirements in order to prevent harm to the network. Rather than stripping Part 68 at this time, the Commission should allow standards-setting organizations to identify those rules that should be eliminated. However, if the Commission rejects this proposal and decides to eliminate most of the technical standards, it must allow a transition period before sunseting these rules.¹⁰ There is no reason to rush this process given that network integrity and protection should be the top priority. BellSouth therefore recommends that the Commission allow the selected industry-standards organization(s) to determine the appropriate transition period. Private industry will be in the best position to determine how and in what time frame such a transition should occur.

II. CONTINUED GOVERNMENT OVERSIGHT AND ENFORCEMENT AUTHORITY ARE NECESSARY TO PROTECT THE PUBLIC AND THE NETWORK FROM HARM.

Although BellSouth supports the Commission's proposal to transfer responsibility for establishing technical criteria to the private sector, it urges the Commission to make clear that it will retain oversight and enforcement authority. There is general agreement that privatization of the standards-setting process will allow CPE to reach the market quicker thereby increasing the choices available to consumers. Nonetheless, as discussed

¹⁰ See *NPRM*, ¶ 56.

above, there are bound to be instances when technical standards are not met and harm to the network ensues. Accordingly, as the Commission properly concludes, “it is necessary for the government to continue to provide the force of law to technical criteria designed to protect the network from harm.”¹¹

In order to provide this force of law, the Commission should not scale back the rules explicitly set forth in Part 68. Expressly retaining the technical standards set forth in Part 68 will give the true force of law to such criteria and will enable the Commission to enforce its rules effectively.

Regardless of the privatization method chosen, the Commission proposes to continue enforcing Part 68. Among other things, the Commission plans to continue to require that local exchange carriers permit connection of compliant CPE to their networks.¹² In addition, the Commission intends to continue allowing carriers to discontinue service to subscribers that connect harmful equipment.¹³ While this option may have been viable years ago at the inception of Part 68 when the LECs had near exclusive control over the CPE market, it is no longer viable in today’s competitive marketplace. Under the Commission’s rules, BellSouth could have lawfully disconnected more than 90,000 subscribers in 1997 for substandard inside wiring.¹⁴ Such a result cannot be what the Commission intended nor would approve. All parties would probably agree that it is inappropriate to penalize unsuspecting customers by disconnecting their

¹¹ *NPRM*, ¶ 22.

¹² *NPRM*, ¶ 88.

¹³ *Id.*

¹⁴ *See supra* note 9 and accompanying text.

service because of non-compliant equipment installed by a building owner or competitive carrier. Thus, the Commission should make sure that appropriate and reasonable remedies are available as part of its enforcement process (*e.g.*, sanctions, penalties, forfeitures).

No matter the method chosen to privatize certain Part 68 functions, the Commission should continue to serve as the final arbiter in the area of enforcement. Indeed, as the Commission proposes, it “should retain ultimate responsibility to enforce compliance with [its] rules, which would include industry-developed technical criteria that [it] may, upon appeal, review and enforce through a *de novo* review process.”¹⁵ Retention of the current Part 68 technical standards combined with the Commission’s oversight and enforcement authority is the most effective way to protect the network and the public.

III. SHOULD THE NEED ARISE, THE COMMISSION SHOULD BE WILLING TO EXPAND PART 68 OR ADOPT NEW RULES TO ENSURE THAT ALL EQUIPMENT INTERCONNECTING TO THE NETWORK DOES NOT RESULT IN HARM.

As discussed above, Part 68 rules play a critical role in preventing harm to the PSTN and are needed now more than ever. In fact, BellSouth believes that, in the near future, additional rules may be needed to better reflect the changes in the marketplace due to the advent of competition.

The current Part 68 rules only govern CPE (*e.g.*, telephones, faxes, modems that operate on customer’s premises). With the enactment of the 1996 Telecommunications

¹⁵ *NPRM*, ¶ 90.

Act and the Commission's implementing rules, there has been a dramatic increase in the network interconnection requirements. When Part 68 was adopted, incumbents were not subject to the extensive unbundling and collocation obligations in place today.

Therefore, limiting regulation to CPE was reasonable. However, in today's environment, the number of CLECs interconnecting to the incumbents' networks is rapidly increasing. Such explosive growth is accompanied by the introduction of new CLEC equipment at various points in the network (other than at the customers' premises) that may not comply with *de facto* standards. These new points of connection result in new potential points for interference and harm to the PSTN.

BellSouth therefore urges the Commission to recognize this fact and be willing to provide appropriate protection should the need arise. This protection could be in the form of additional Part 68 rules or the adoption of a new set of rules. Regardless of the method chosen, the Commission should explicitly require that the PSTN be protected from harms caused by the connection of any equipment, at any point, not just the connection of CPE at the terminal.

The Commission would be obligated by statute to establish additional regulation to protect the PSTN should the need arise. Section 256(a)(2) imposes upon the agency the duty "to ensure the ability of users and information providers to seamlessly and transparently transmit and receive information between and across telecommunications networks."¹⁶ Moreover, Section 256 (b)(1) mandates that the Commission "establish procedures for Commission oversight of coordinated network planning by

¹⁶ 47 U.S.C. § 256(a)(2).

telecommunications carriers and other providers of telecommunications service for the effective and efficient interconnection of public telecommunications networks used to provide telecommunications service.”¹⁷ Thus, the law requires the Commission to establish appropriate procedures to achieve efficient and effective network interconnection that results in the “seamless and transparent” delivery of telecommunications services to the public. In order to satisfy these obligations, the Commission could either expand Part 68 or adopt new rules designed to ensure that all equipment used to interconnect to the PSTN at any point is compliant and will not harm the network.

Such a change in the Commission’s rules would be consistent with the goals proposed in the *NPRM*, which are as follows:

- To develop technical criteria to protect the wireline telephone network from harm, as defined in the Commission’s rules;
- To allow the expeditious approval of terminal equipment for connection to the wireline telephone network;
- To ensure that technical criteria for CPE are responsive to the needs of new suppliers, new technology, and innovative terminal equipment and services;
- To rely, in developing specific technical criteria to carry out these goals, on nationally recognized standards for the relevant technical aspects of CPE; and
- To minimize the duration and expense of any related activities, especially concerning the introduction of new technology, *e.g.* testing and product approval.¹⁸

Although BellSouth supports the adoption of explicit goals, it recommends that the Commission broaden these goals to include equipment other than CPE as discussed

¹⁷ 47 U.S.C. § 256(b)(1).

¹⁸ *NPRM*, ¶ 30.

above. The first suggested goal – “to develop technical criteria to protect the wireline telephone network from harm as defined in the Commission’s rules” – arguably encompasses equipment other than CPE. Nevertheless, for purposes of clarity and in anticipation of future technological advancements, the Commission should expand the list of objectives to include all equipment that is connected to the wireline telephone network at any point.

IV. THE COMMISSION SHOULD ALLOW STANDARDS-SETTING ORGANIZATIONS TO ESTABLISH TECHNICAL CRITERIA THAT ARE SPECIFICALLY INCORPORATED INTO THE COMMISSION’S RULES WITHIN A SPECIFIED TIME PERIOD.

The Commission proposes three alternatives for privatizing the process for developing technical criteria. These alternatives include: (1) the identification of a “gatekeeper” Standards Development Organization (“SDO”) that would establish and publish binding technical criteria; (2) the adoption of a presumption that CPE complies with technical specifications established by any national standards-setting organization; and (3) the incorporation of standards developed by national standards organizations into the Commission’s rules through the rulemaking process.¹⁹

BellSouth supports the third option – incorporating standards into the Commission’s rules – with the following caveat. The Commission should establish specific time limits to govern the issuance of a final decision. As the Commission explains, the process of incorporating standards into the Commission’s rules is a long-standing practice and “is one way of giving the referenced standards the full force of

¹⁹ *NPRM*, ¶ 23.

law.”²⁰ BellSouth believes this alternative is the best approach because it does not vest authority in a single standards-setting body and gives weight and the force of law to the standards.

BellSouth recognizes that one of the biggest concerns regarding this alternative is the slow pace of rulemakings. To alleviate this concern, the Commission should adopt a self-imposed time limit for its decisionmaking. For example, if there is industry consensus on a particular technical standard, the Commission should establish an accelerated comment cycle and issue a final order within 60 days after the close of the pleading cycle. In the case of a waiver request, an interim standard, or some other exception, BellSouth recommends that the Commission resolve such a request within 120 days. Specific time limits on the issuance of a final order are critical to the success of this proposal and should be adopted.

BellSouth also supports the Commission’s tentative conclusion to require the designated SDO to: (1) be ANSI-accredited; (2) be professionally and administratively prepared to take responsibility for administration of technical criteria; (3) be experienced with technical criteria development; and (4) follow any Commission rules and guidelines for their operations.²¹ BellSouth further believes that the designated “gatekeeper SDO” should also represent a cross-section of the industry and provide fair and broad participation by interested parties. No one segment of the industry should have an unfair advantage in the decisionmaking process.

²⁰ *NPRM*, ¶ 58.

²¹ *See NPRM*, ¶ 43.

Our primary concern with the “gatekeeper SDO” alternative is the possibility that some members of the industry may not have their views appropriately represented. For example, although the *NPRM* identifies TIA as a potential candidate, TIA’s current membership does not represent a cross-section of the industry. Because the current constituency of TIA is primarily manufacturers, the interests of LECs, information providers, and consumers may not be appropriately reflected in the views and recommendations of this organization. Accordingly, if the Commission adopts the “gatekeeper SDO” option, it must ensure fair and broad representation within the chosen standards-setting body. Under this proposal, BellSouth would support the designation of ATIS or one of its T1 committees as the “gatekeeper SDO.” ATIS satisfies the selection criteria proposed by the Commission and, as Sprint has pointed out, has a broader representation than TIA.²²

If the Commission adopts the “gatekeeper SDO” option, BellSouth recommends that the agency also adopt a 120-day time limit on the “gatekeeper’s” resolution of Part 68 waiver requests. Although BellSouth believes that decisions should not be allowed to languish, and disputes should be quickly resolved, it is concerned that 60 days may not provide sufficient time to thoroughly consider an issue. Of course, the 120-day limit is an outer limit. The “gatekeeper SDO” would be free – and certainly encouraged – to resolve requests sooner. Nonetheless, BellSouth believes that the imposition of a specific

²² *NPRM*, ¶ 42 (Sprint recommends ATIS Committee T1 “because it includes central office switch engineers from equipment manufacturers and because it says the group has a greater participation by incumbent and new local exchange carriers.”).

time limit on decisionmaking will allow for a more effective and efficient process to meet the needs of manufacturers, carriers, and ultimately, the public.

BellSouth does not believe that the “Multiple Standards Organizations” (“MSO”) alternative is a viable option for the very reasons set forth in the *NPRM*. First, as the Commission acknowledges, “uniform nationwide standards may not always result under this option.”²³ National standards are necessary to protect the network and ensure the ability of the public “to seamlessly and transparently transmit and receive information between and across telecommunications networks,” as mandated by Section 256(a)(2). Second, BellSouth agrees with the Commission that there is a risk that entities who disagree with the position of an existing standards body may set up their own standards organizations.²⁴ Finally, multiple standards, even where technically and operationally viable, would likely increase costs to manufacturers and consumers if manufacturers were required to offer alternative devices.²⁵ In light of the foregoing, the Commission should not adopt the MSO option.

V. BELLSOUTH SUPPORTS THE PRIVATIZATION OF THE EQUIPMENT REGISTRATION PROCESS AS LONG AS APPROPRIATE SAFEGUARDS ARE IN PLACE.

The Commission tentatively concludes that “some type of equipment approval process continues to be necessary for terminal equipment” and “that the Commission no longer needs to perform the function of direct registration of CPE.”²⁶

²³ *NPRM*, ¶ 55.

²⁴ *See NPRM*, ¶ 55.

²⁵ *NPRM*, ¶ 55.

²⁶ *NPRM*, ¶ 63.

BellSouth agrees. The Commission proposes the following three methods of requiring proof of equipment compliance with technical criteria, each of which would reduce or eliminate the Commission's role in the equipment approval and registration process: (1) relying on the use of Telecommunications Certification Bodies ("TCBs") for equipment approval; (2) allowing manufacturers to use the declaration of conformity process ("DoC"); and (3) allowing manufacturers to use the verification process.²⁷

BellSouth does not object to either the transfer of Part 68 equipment authorization functions to TCBs or the use of the DoC process, or some combination of the two. However, under either alternative, the Commission's force of law is essential. There may be instances in which the TCB or the party performing the measurements on CPE compliance are found to be remiss in their duties by certifying harmful CPE as compliant. Appropriate penalties and sanctions must be available, including, for example, the loss of Commission-accredited status as a TCB or the loss of accreditation to perform DoC measurements.

The Commission could also impose penalties similar to those imposed for deliberate misrepresentations when filing ARMIS Network Service Quality Reports. When completing these reports, a BellSouth officer must certify that the information provided is true and accurate. In cases of deliberate misrepresentation, the certifying officer may be subject to imprisonment and/or significant fines. Similar penalties would be appropriate for violations by TCBs or parties authorized to issue declarations of conformity.

²⁷ *NPRM*, ¶ 64.

Most parties will likely agree that tangible benefits and efficiencies will result from the privatization of the equipment registration function. For example, as the record demonstrates, privatization should significantly reduce the length of time required to obtain equipment approval.²⁸ In addition, Commission personnel responsible for equipment registration will be freed up to handle other Part 68 matters. If the Commission adopts the proposal to incorporate industry-recommended standards into its rules, it could re-deploy employees to work on the corresponding Part 68 rulemakings. These additional human resources would enable the Commission to meet BellSouth's proposed deadlines (*e.g.*, 60, 120 days) for resolving Part 68 matters. Consistent with Commissioner Ness's view that the redeployment of Commission personnel to focus on enforcement matters is in the public interest,²⁹ BellSouth suggests that Commission personnel no longer needed to perform equipment certification functions be re-assigned to Part 68 enforcement activities as deemed necessary.³⁰

Finally, BellSouth opposes the use of the verification process for equipment certification because of the lack of mandatory accreditation for the testing facilities. Contrary to ITI's assertion, the proposed verification process would not "bring the Commission's procedures in line with international norms for the supplier's declaration

²⁸ See *NPRM*, ¶ 63.

²⁹ See Separate Statement of Commissioner Susan Ness, Re: Amendment of Parts 2,15, 18, and Other Parts of the Commission's Rules to Simplify and Streamline the Equipment Authorization Process for Radio Frequency Equipment (rel. April 2, 1998).

³⁰ BellSouth would like to take this opportunity to recommend the elimination of the ARMIS Network Service Quality Reporting requirements. Such a change would reduce the Commission's administrative burden and free up valuable resources. If the Commission were to abolish this requirement, it could re-assign Commission personnel to handle other Part 68 functions, such as rulemakings or enforcement of Part 68.

of conformity”³¹ Under the verification alternative, there is less assurance that associated CPE would meet the current Part 68 standards thereby threatening the integrity of the PSTN.

The United States is recognized as the world leader in telecommunications both from a technology and service quality perspective. There are many countries abroad where the quality of telecommunications service is inferior. While there may be many reasons for poor service quality, non-compliant or substandard CPE can be a major factor. As the Commission points out, “[c]urrently, the U.S. Customs Service prevents the importation into the United States of terminal equipment that is not Part 68-registered.”³² The Commission’s interdiction of non-registered equipment serves a valuable purpose – protection of the public and the PSTN. Although the Commission tentatively concludes that its “proposals will not affect the ability of the U.S. Customs Service to enforce the provisions of 19 U.S.C. section 3109 dealing with the importation of equipment not compliant with Part 68,”³³ adoption of the verification option would certainly dilute the effectiveness of the interdiction process. It would be unwise and potentially disastrous to allow CPE that does not adhere to rigorous certification procedures abroad to enter the United States. Accordingly, BellSouth urges the Commission not to adopt the verification process as the method for equipment approval.

³¹ *NPRM*, ¶ 72.

³² *NPRM*, ¶ 10.

³³ *NPRM*, ¶ 88.

CONCLUSION


The face of the telecommunications industry has changed dramatically over the last several years. As a result, now more than ever, Part 68 rules are absolutely essential to ensure that the PSTN and the public are protected from harm. BellSouth cautions the Commission against moving in haste to streamline its Part 68 functions without careful consideration of the potential ramifications. The Commission remains ultimately responsible for the protection of the network and cannot – and should not – abdicate that responsibility.

Respectfully submitted,

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June 23, 2000

CERTIFICATE OF SERVICE

I do hereby certify that I have this 23rd day of June, 2000, served the following parties to this action with a copy of the foregoing *BELLSOUTH COMMENTS*, CC Docket No. 99-216, by hand delivery, or by placing a true and correct copy of same in the United States Mail, addressed to the parties listed below.

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